



# Naperville

## CITY COUNCIL AGENDA ITEM

**SUBJECT:** Water Street Agreements and Water Street TIF District Term Extension

**TYPE OF VOTE:** Simple Majority

**ACTION REQUESTED:**

- a) Pass the ordinance extending the Water Street Tax Increment Financing (TIF) District Term.
- b) Pass the ordinance approving the Water Street Redevelopment Agreement.
- c) Pass the ordinance approving the Public Improvement Escrow Agreement.
- d) Pass the ordinance approving the Purchase and Sale Agreement.
- e) Pass the ordinance approving the Rebate Agreement.
- f) Pass the ordinance approving the Parking Facility License Agreement.

**BOARD/COMMISSION REVIEW:**

N/A

**COUNCIL ACTION PREVIOUSLY TAKEN:**

Date	Item No.	Action
12/4/2007	N1	Passed Ordinances 07-262, 07-263, and 07-264 approving the Water Street TIF District (9-0).
3/19/2013	M1	Passed Ordinance 13-021 vacating a portion of the Water Street ROW (8-1).
4/2/2013	N1	Passed Ordinances 13-025, 13-026, and 13-027 pertaining to the Water Street District P.U.D. (6-2).
11/5/2014	N2	Passed Ordinances 14-168, 14-169, 14-170, 14-171 and 14-172 approving Final Subdivision Plats, a Major Change to the Water Street P.U.D., a temporary use and ROW encroachments (7-2).
11/18/2014	N2	Adopted Resolution 14-042 identifying Major Business Terms for the Water Street District (6-2).

**DEPARTMENT:** Legal/Transportation, Engineering and Development

**SUBMITTED BY:** Anastasia Urban, Development Manager  
William Novack, Director of Transportation, Engineering and Development  
Pat Lord, Senior Assistant City Attorney

**FISCAL IMPACT:**

Maximum incremental sales and hotel tax rebate of \$7.5 million. The Tax Increment Financing District will fund public improvement costs that would otherwise be the responsibility of the City (Riverwalk, parking deck and other public infrastructure). Public improvement costs that are the City's responsibility in excess of TIF revenues, will be funded through CIP MB-138, Water Street District Improvements, CIP TC-207, and the downtown Food and Beverage Tax (for parking costs).

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**BACKGROUND:**

In December 2007, the City Council adopted ordinances approving the Tax Increment Financing ("TIF") redevelopment plan, designating a project area, and creating tax increment financing for the Water Street District. On April 2, 2013 the Naperville City Council passed ordinances approving the Final Subdivision Plats and Final PUD Plats for the Water Street District to construct a hotel, commercial space including restaurant, retail and office uses, a parking deck and Riverwalk improvements. On April 16, 2013 the Naperville City Council adopted Resolution 13-16 which identified Major Business Terms (MBT) for the development of the Water Street District. Since receiving these approvals in 2013, the Developer has refined aspects of the project, including upgrading the hotel flag to Hotel Indigo and including a banquet facility in the project. These changes, among others, required a major change to the PUD, which was approved by the City Council on November 5, 2014. Upon further review of the financial structure of this public-private partnership, it was also necessary to update the Major Business Terms prior to entering into a Redevelopment Agreement with the Developer. These Major Business Terms were approved by the City Council on November 18, 2014 by Resolution 14-042. The Major Business Terms set forth the terms and framework of the Water Street Agreements which are necessary in order for the Developer to secure financing for the project.

**DISCUSSION:**

The Water Street project is a complex public-private partnership which involves the City, the Developer and the Developer's lenders. The Water Street Agreements address shorter-term issues such as construction of public and private Improvements, and longer-term issues such as rebate payments, reserved spaces for the hotel, hotel flag requirements, and traffic management. Staff has worked very closely with the Developer and their lenders to draft and review each provision of the agreements attached hereto. Upon City Council approval of these agreements, the Developer will schedule a closing for its construction loan and begin construction of the project.

The total project costs are projected to be approximately \$93 million, of which approximately \$24 million is attributable to public improvements such as the Riverwalk, parking deck and other infrastructure improvements. These infrastructure needs were identified in the Water Street Vision Statement and contemplated at the time of the establishment of the TIF District in 2007.

**TIF District Extension**

Since the creation of the Water Street TIF District in 2007, the fund has generated approximately \$687,000. By nature of tax increment financing, the most significant portion of TIF revenues will be generated in the later years of the TIF term which was originally due to expire in 2030. Since the construction of the project was postponed approximately seven (7) years after the

creation of the TIF, the Developer initiated a request to extend the term of the TIF through Illinois State Legislature, which was approved in the legislative session this past spring. State law allows for a maximum of an additional 12-year extension to the standard 23-year term. Since the City only seeks to extend the TIF term by the amount of time construction was delayed, the attached ordinance provides for a 7-year extension of the Water Street TIF District, providing for a total term of 30 years. All TIF revenues will be dedicated to public improvements; no TIF revenue will be paid to the Developer.

#### Redevelopment Agreement

The Redevelopment Agreement (RDA) is essentially the "umbrella" agreement that captures the specifics from the Major Business Terms (MBT) and identifies all other associated agreements necessary for the development of the project such as a Parking Facility License Agreement, Rebate Agreement, and Purchase and Sale Agreement. The RDA sets forth the Public Improvement cost responsibilities of the City and Developer, addresses the process and penalties in the event of a default, and specifies minimum requirements during construction. As the real estate and lending markets have evolved over the last several years, the agreements contain provisions requested by both the Developer/lenders and City that have not typically been included in development agreements the City has entered into in the past. Given current market conditions and negotiation of certain remedies, the RDA provides a balance of each party's interests, while maintaining the intent of the approved Major Business Terms. Although the RDA covers a wide variety of provisions, a few concepts contained within the agreement are discussed below to provide additional clarity.

#### *Separate Lot Owners*

One component that evolved during the negotiation of the RDA since approval of the MBT is the concept that the developer of the Water Street project will be able to transfer the Office Building to another entity for ownership and development without City approval. As specified by the MBTs, the City has certain approval rights for future transfers of any component of the project. Upon further review and consideration, staff is recommending approval of this structure in the RDA for the following reasons; (i) during the entitlement approvals for the project the Office Building was generally identified as Phase 2 of the development, (ii) most of the future responsibilities and on-going obligations for the project are associated with the Hotel Facility, and (iii) the Office Building will not be subject to the Rebate Agreement. As such, the RDA has been drafted to allow the transfer of the Office Building without City consent; however obligations such as payment of the associated Parking Fee-In-Lieu payment, and development in accordance with the approved P.U.D. will remain. This provision will also apply to the Theater Building as a "Separate Lot Owner" in the agreement, however future transfer without the City's consent can only occur after conveyance of the Public Improvements to the City.

#### *Performance and Payment Bonds*

The RDA requires that performance and payment bonds in a form, amount and from a source approved by the City be provided to ensure construction of the public improvements. The bonds will need to be finalized and approved by the City Attorney prior to the City executing any of the Water Street Agreements.

### Public Improvements Escrow Agreement

This public-private partnership authorizes the Developer to construct the public improvements with reimbursement for certain portions by the City. In order to minimize the City's cost by not paying for interest during construction, the City will be making payments as construction progresses. In order to ensure that the public improvements, and most importantly the parking deck property and Riverwalk property, are conveyed to the City without any encumbrances, the Public Improvement Escrow Agreement sets forth specific instructions to be executed by an escrow agent during a normal project delivery and an alternate set of instructions to be followed in the event of default, which include the developer forfeiting one-half of the parking land payment, equal to \$1.6 million.

### Purchase and Sale Agreement

The Purchase and Sale Agreement includes the terms necessary to convey the parking deck property and Riverwalk property to the City upon completion of public improvements, in accordance with other controlling agreements, such as the Public Improvements Escrow Agreement.

### Rebate Agreement

The terms of the sales and hotel tax sharing agreement are the same terms approved in the Major Business Terms and provide for a maximum rebate amount of \$7.5 million based on the following:

- 100% of the hotel tax for 20 years
- 50% of the retail sales tax for 20 years

As noted above, the Office Building will not be subject to the Rebate Agreement, and any retail sales tax that may be generated from future tenants of the Office Building (e.g. tax on hair products from a salon) will be retained by the City and not subject to rebate. The Rebate Agreement also has terms unique to the Water Street project, particularly that rebate payments may be used by the City to offset unpaid amounts owed to the City (such as Parking Facility License fee) subject to default and cure provisions.

### Parking Facility License Agreement

The Parking Facility License Agreement outlines the payment terms and use of 120 parking spaces to be reserved for the use of the hotel. The value of the annual license payment will be based on the actual construction costs for the 120 reserved parking spaces, which is estimated to be \$2,472,947.54, plus interest based on the actual taxable bond rate at the time of issuance by the City.

### Other Agreements

Other agreements that will be required pursuant to the Redevelopment Agreement include:

- (a) Riverwalk Easements
- (b) Parking Overflow Agreement
- (c) Construction Payment Escrow Agreement
- (d) Water Street CCRS (Covenants, Conditions and Restrictions)

- (e) Water Street Easement/Encroachment Agreements (Pedestrian Bridge; Balconies; Transformer)
- (f) Lender's Acknowledgment Agreement

Section 6.1 of the RDA authorizes the City Manager to execute all of the above agreements, except for the Parking Overflow Agreement which will be brought back to a future City Council meeting. The terms of the Parking Overflow Agreement are outlined in Article 14 of the RDA.

**Water Street Redevelopment Agreements**

Approval of the extension of the TIF District term and approval of the Water Street Agreements are necessary to allow for this public-private partnership to become a reality and further the Water Street Vision Statement by construction of the Water Street District P.U.D. as approved by the City Council on November 5, 2014.

**RECOMMENDATION:**

- a) Pass the ordinance extending the Water Street Tax Increment Financing (TIF) District Term.
- b) Pass the ordinance approving the Water Street Redevelopment Agreement.
- c) Pass the ordinance approving the Public Improvement Escrow Agreement.
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**ATTACHMENTS:**

- 1. Water Street District - Ordinance/TIF District Extension
- 2. Water Street District - Ordinance/Redevelopment Agreement\*
- 3. Water Street District - Ordinance/Public Improvement Escrow Agreement
- 4. Water Street District - Ordinance/Purchase and Sale Agreement
- 5. Water Street District - Ordinance/Rebate Agreement
- 6. Water Street District - Ordinance/Parking Facility License Agreement

*\*Hard copy of full agreement available from the City Council's Executive Assistant, Reggie Lynch.*